IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 15715 of 2007(U)

OS.51/1998 of PRL.SUB COURT,KOTTAYAM

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PETITIONER:

KRISHNAN NAMBIAR,
S/O.KRISHNAN NAMBIAR, NAMBIAR MADOM,
ERAVINALLOOR P.O., PUTHUPPALLY.

BY ADV. SRI.M.NARENDRA KUMAR

RESPONDENTS:

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1. VIJAYABHAVAN NAMBIAR,
S/O.RAGHAVAN NAMBIAR, RAGA SUDHA,
MANIANKKARATHOPPU, PAAPPANAMCODE, NEMAM VILLAGE.

2. BALAMANI AMMA,
W/O R.NARAYAN NAMBIAR, GEETHANJALI,
MANIANKKARATHOPPU, PAPPANAMCODE, NEMAM VILLAGE.

3. RADHAMANI AMMA,
W/O.SANKARANARAYANAN NAMBIAR, ATHIRA,
AMBA NAGAR, VANCHIYOOR, TRIVANDRUM.

4. INDIRA DEVI, S/O NARAYANAN NAMIAR,
ATHIRA, AMBANAGAR OF -DO- -DO-.

5. P.S.SASIDHAR, S/O.SUBRAMANIAM,
SHYAM NIVAS,
ERAVINALLOOR, PUTHUPPALLY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.15715 OF 2007 U

Dated this the 30th May, 2007.

JUDGMENT

The writ petition is filed challenging to quash the order passed in I.A.1470/04 in O.S.51/98 pending before the Principal Subordinate Judge's Court, Kottayam. It is an application filed for amendment of the written statement. The suit is one for enforcement of a pre-emption right. According to the plaintiff the pre-emption right is there as per partition deed No: 335/71. The defendant has filed written statement and in the present application would contend that he has come to know about the pre-emption clause only on seeing the document after the production before the court. The said contention of the defendant is found to be untrue because in the counter statement and in other places he has mentioned about the pre-emption clause of 1971 document. Then another contention raised by the learned counsel for the writ petitioner is that according the defendant there is difference between the amount of consideration and the consideration shown in the document. He would contend that it is hit by Sections 91 and 92 of the Indian Evidence Act, 1872. It is a well settled principle that the court should be liberal in allowing application for amendment unless it totally changes the

cause of action or it causes that much prejudice to the other side, which cannot be compensated by any other arrangement. Just because there is a belated plea it should not stand in the way of being disallowed. So far as Sections 91 and 92 of the Indian Evidence Act is concerned, it is a matter which has to be raised at the stage of evidence and when such a question is raised before the court the court is bound to answer. So, a decision to be taken that Sections 91 and 92 of the Indian Evidence Act will apply or will not apply really does not detain us long in allowing an application for amendment. So, in the interest of justice, the amendment is allowed and therefore, I decline to interfere with the decision of the learned Subordinate Judge. But, However, I make it clear that the trial court is bound to consider the question of admissibility or inadmissibility of evidence under Sections 91 and 92 of the Evidence Act when it is raised at that stage. The plaintiff is also at liberty to file a replication detailing all his contentions including the legal bar of letting oral evidence in contravention with the terms of document under Sections 91 and 92 of the Indian Evidence Act. Writ petition is disposed of accordingly.

Being a suit of 1998, the trial court shall try to consider and dispose of the matter as expeditiously as possible.

M.N.KRISHNAN
Judge

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